

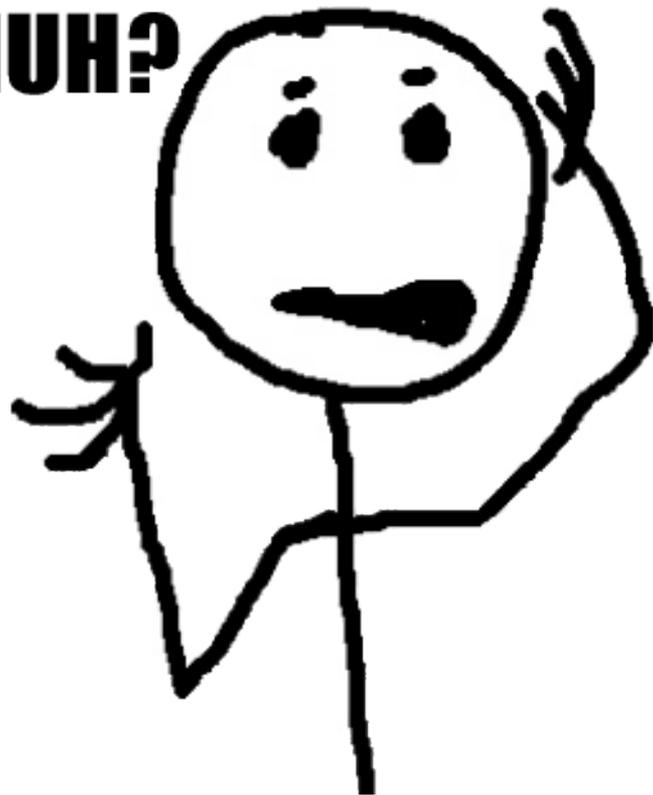
# Fair Housing Assistance Program

## **FHAP CONCILIATION STANDARDS**

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Assistance Program

October 11, 2018

**HUH?**



# Fair Housing Assistance Program

## Areas of Emphasis

- Quality of investigations
- Moving cause findings to enforcement (administrative or judicial)
- Effective Conciliations / Settlements

# Fair Housing Assistance Program

## Why YOU Matter

- FHAPs handle approximately 8 of every 10 housing discrimination complaints filed with a government agency.

# Fair Housing Assistance Program

## Why YOU Matter

- In FY2017, FHAPs closed 6659 complaints.
- 1,847 (28%) of those closures were conciliations.
- 1,162 (17.5%) of these complaints were handled by Region V FHAP agencies
- 226 (19%) were conciliated by Region V FHAP agencies.

<b>YEAR</b>	<b>CONCILIATION % Region V</b>	<b>Conciliation % ALL FHAP</b>
2014	17.8%	19.2%
2015	16.1%	21.4%
2016	21.8%	27.7%
2017	19.4%	27.8%

<b>YEAR</b>	<b>AGENCY</b>	<b>CASES</b>	<b>CONCIL.</b>	<b>CONCIL. %</b>
<b>2014</b>	<b>ILLINOIS</b>	310	11	3.5%
	<b>INDIANA</b>	133	17	12.8%
	<b>MICHIGAN</b>	351	55	15.7%
	<b>OHIO</b>	439	132	30%
<b>2015</b>	<b>ILLINOIS</b>	351	29	8.3%
	<b>INDIANA</b>	140	14	10%
	<b>MICHIGAN</b>	387	58	15%
	<b>OHIO</b>	460	101	22%
<b>2016</b>	<b>ILLINOIS</b>	276	37	13.4%
	<b>INDIANA</b>	128	12	9.4%
	<b>MICHIGAN</b>	363	108	29.8%
	<b>OHIO</b>	314	67	21.3%
<b>2017</b>	<b>ILLINOIS</b>	290	20	6.9%
	<b>INDIANA</b>	132	8	6.1%
	<b>MICHIGAN</b>	290	84	29.0%
	<b>OHIO</b>	274	62	22.6%

# Fair Housing Assistance Program

## Areas of Emphasis

- ~~Quality of investigations~~
- **Moving cause findings to enforcement (administrative or judicial)**
- ~~Effective Conciliations / Settlements~~

# CONCILIATION STANDARDS

## SOURCES:

- Memorandum of Understanding
- Cooperative Agreement
  - Contributions Agreement
    - *Criteria for Processing*
    - *Payment Schedule*
- FHAP Regulations
- Other Guidance

# Memorandum of Understanding

- **MOU § III Definitions:**

"**Conciliation**" means the attempted resolution of issues raised by a complaint . . . involving the aggrieved person, the respondent, and the Agency representative.

"**Conciliation agreement**" means a written agreement . . . signed by the complainant, respondent, and Agency.

# Memorandum of Understanding

## § VII. COMPLAINT PROCESSING

(E)(3) In conciliating a complaint, the Agency will attempt to get a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person . . .

# Memorandum of Understanding

## § VII. COMPLAINT PROCESSING

(E)(3) . . . and take such action as will assure the elimination of the discriminatory housing practices, or the prevention of their occurrence in the future.

# Memorandum of Understanding

## § VII. COMPLAINT PROCESSING

(E)(4) The terms of a conciliation agreement will be reduced to writing. The agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest.

# IC 22-9-1-2 Public policy; construction of chapter

Sec. 2. (a) It is the public policy of the state to provide all of its citizens equal opportunity . . .

(b) The practice of denying [equal] rights to properly qualified persons . . . is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of this state.

# IC 22-9-1-6 Civil rights commission; powers and duties

Sec. 6. (d) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies.

...

(f) The commission may create such advisory agencies . . . as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies . . . to: (2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

# CRITERIA FOR PROCESSING

## § V. CRITERIA FOR CONCILIATION

In conciliating a complaint, agencies must attempt to achieve a just resolution of the complaint and obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the complainant . . .

# Criteria for Processing

## § V. CRITERIA FOR CONCILIATION

### A. Quality Requirements/Required Documents:

The conciliation agreement must be in writing, dated and signed by complainant, respondent, and the authorized FHAP agency representative, and include:

(5) Relief that remedies the discrimination alleged in the complaint or is otherwise agreed upon by the parties and *appropriate based on evidence obtained in the investigation of the matter.*

# CRITERIA FOR PROCESSING

## § V. CRITERIA FOR CONCILIATION

In conciliating a complaint, agencies must . . . take actions to ensure the elimination of alleged discriminatory housing practices and the prevention of their occurrences in the future.

# Criteria for Processing

## § V. CRITERIA FOR CONCILIATION

### A. Quality Requirements/Required Documents:

The conciliation agreement must be in writing, dated and signed by complainant, respondent, and the authorized FHAP agency representative, and include:

- (6) As appropriate, *relief that adequately vindicates the public interest*

# CRITERIA FOR PROCESSING

## § V(A). CRITERIA FOR CONCILIATION

8. A statement that the agreement shall be made public unless the complainant and respondent otherwise agree, and an authorized representative of the agency determines that disclosure is not required to further the purposes of the substantially equivalent law.

Circumstances that may result in partial or complete nondisclosure of a conciliation agreement may include:

- Sexual harassment claims
- A complainant's physical or mental condition, or medical diagnoses; or
- The fact that a complainant is a resident in a domestic violence shelter or other protected residence which complainant believes may, if disclosed, be a safety risk.

# CRITERIA FOR PROCESSING

## § V(A). CRITERIA FOR CONCILIATION

9. Provisions that allow the FHAP agency to effectively monitor compliance with the agreement.

# PAYMENT SCHEDULE

**Effective Conciliation: an “effective” conciliation is one that provides both:**

- **Substantive individual relief for the complainants(s)**
- **Meaningful public interest relief**

# PAYMENT SCHEDULE

Substantive individual relief includes both:

- Monetary relief
- Other affirmative relief required to make the complainant(s) whole:
  - Approval or restoration of a housing opportunity
  - Approval of a reasonable accommodation request

# PAYMENT SCHEDULE

The monetary relief afforded to the complainant should not be *de minimis*; it should compensate the complainant(s) for the harm alleged and be commensurate with relief obtained in other similar cases.

# PAYMENT SCHEDULE

## Meaningful public interest relief:

Actions to eliminate discriminatory housing practices (*for other potential aggrieved persons*) or to prevent such discrimination in the future.

# 24 C.F.R. § 115.206(e)(4)

## FHAP Performance Standard #4

Requires the conduct of compliance reviews of conciliation agreements. Compliance with this standard **requires**:

- That the agency have in place and follow procedures for conducting such reviews
- That the conciliation agreements themselves include explicit monitoring provisions

# 24 C.F.R. § 115.206(e)(5)

## FHAP Performance Standard #5

The agency must consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of discriminatory practices. The performance assessment shall include, but not be limited to:

- (iii) An assessment of the types of relief sought by the agency with consideration for the inclusion of affirmative provisions designed to protect the public interest
- (v) A review of the adequacy of the relief sought and obtained in light of the issues raised by the complaint

# **OTHER GUIDANCE**

## **Oct. 2017 FHAP Conciliation Memo**

**MEMORANDUM FOR:** Fair Housing Assistance Program Participants

**FROM:** Joseph A. Pelletier, Director, Fair Housing Assistance Program

**SUBJECT:** Fair Housing Assistance Program Requirements Related to Conciliation and Conciliation Agreements

# Oct. 2017 FHAP Conciliation Memo

“The FHAP Division is concerned that some FHAP participants do not appear to understand their role in the conciliation process . . .”

# Oct. 2017 FHAP Conciliation Memo

## Role of the Conciliator

Facilitate a conversation around trying to have the parties reach agreement:

- Have a realistic understanding of the strengths and weaknesses of the case
- Be familiar with the parties' positions and resources

# Oct. 2017 FHAP Conciliation Memo

## Role of the Conciliator

- Provide all parties with a realistic context
- Actively assist in crafting the terms of the agreement

# Oct. 2017 FHAP Conciliation Memo

## Role of the Agency

FHAP agencies are a party to a conciliation agreement and are responsible for approving such agreements.

- **Active participant** in the conciliation process

# Oct. 2017 FHAP Conciliation Memo

## Role of the Agency

- As a signatory, the agency has an **affirmative obligation** to not sign an agreement simply because the other parties agree to it if the conciliator or responsible agency officials believe that the relief provided is inadequate to either address the alleged harm or to prevent the conduct from reoccurring in the future.

# Oct. 2017 FHAP Conciliation Memo

## Nature of Conciliation Agreements

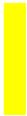
A conciliation agreement is a single agreement.

A conciliation agreement may not include separate side agreements, or agreements only between a complainant and a respondent.

# State Settles Housing Discrimination Case Involving Disability Discrimination

## Relief to Complainant:

- \$575,000 and
- Restored housing opportunity



# State Settles Housing Discrimination Case Involving Disability Discrimination

## Public Interest Relief:

- Fair Housing Training
- Development of a Reasonable Accommodation Policy
- Post nondiscrimination material and posters at ALL rental properties
- \$5,000 Civil Penalty

# CONCILIATION AGREEMENT

**Relief to Complainant = \$25,000**

## **Public Interest Relief:**

- Resignation of Respondent
- Development of Policy
- Distribution of Materials
- Fair Housing Training

**OTHER Relief: \$5,000 civil penalty**

# FAKE NEWS INVASION



# “PUBLIC INTEREST” PROVISIONS???

“Respondent agrees to consistently apply its policies and procedures to all applicants and residents in a nondiscriminatory manner by refraining from engaging in any acts of discrimination against persons because of race, sex, national origin, color, religion, disability or familial status.”

# Memorandum of Understanding

## § VII. COMPLAINT PROCESSING

(E)(3) . . . and take such action as will assure the elimination of the discriminatory housing practices, or the prevention of their occurrence in the future.

# “PUBLIC INTEREST” PROVISIONS???

“Respondent agrees to consistently apply its policies and procedures to all applicants and residents in a nondiscriminatory manner by refraining from engaging in any acts of discrimination against persons because of race, sex, national origin, color, religion, disability or familial status.”

# “PUBLIC INTEREST” PROVISIONS???

“Section \_\_\_ of {ordinance} protects an individual’s right to file a complaint based on coercion, interference, or intimidation. Respondent has been advised that it is unlawful to coerce, intimidate, threaten or interfere with any person because such person has filed a complaint or exercised any right...”

# “PUBLIC INTEREST” PROVISIONS???

“Respondent agrees not to retaliate against or interfere with the Cp or any other persons, on account they exercised rights under the {ordinance} or on account of having aided or encouraged the Cp or any other persons in the exercise or enjoyment of their rights under the {ordinance}.”

# A word about Fair Housing Training:

“The Respondent agrees to participate in Fair Housing training. The [FHAP agency] will provide the training for the Respondent.”

# CONCILIATION AGREEMENT

- **Relief for Complainant: \$3,750**
- **Public Interest Relief**
  - Fair Housing Training

# Conciliation Agreement

*X v. Y*

## Relief to Complainant:

*Y agrees to pay X \$\_\_\_\_\_*

## Public Interest Relief:

*Y agrees to participate in Fair Housing Training.*

# Simple Steps to include better (more effective) Public Interest in your agreements:

- **THINK** about the allegations/facts of the case and what you have discovered in your investigation.



# Simple Steps to include better (more effective) Public Interest in your agreements:

- Development / Implementation of written policies (with approval by the FHAP)



# Simple Steps to include better (more effective) Public Interest in your agreements:

- Distribution of materials re:  
nondiscrimination and the State or local law  
/ Fair Housing Poster



# Simple Steps to include better (more effective) Public Interest in your agreements:

- Apply relief to ALL properties controlled by the respondent – not just to the subject property.



Simple Steps to include better (more effective)  
Public Interest in your agreements:

- Fair Housing Training – be specific  
and comprehensive.

# THINK OUTSIDE THE BOX (BOWL)



